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**Use and application of United Nations standards
and norms in crime prevention and criminal justice****Outcome of the Cross-Regional Seminar on “Access to
Legal Aid in Criminal Justice Systems — Quality
Assurance, Holistic Services and Equity in Access,” held in
Guangzhou City, People’s Republic of China,
24–25 January 2018*****Summary*

The present document reflects the exchanges of experiences during the Seminar on “Access to Legal Aid in Criminal Justice Systems — Quality Assurance, Holistic Services and Equity in Access,” held in Guangzhou City from 24–25 January 2018, organized jointly by the Ministry of Justice of the People’s Republic of China and the United Nations Office on Drugs and Crime (UNODC), with the aim of promoting the implementation of the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*.¹ Over 80 legal aid experts, including experts from various provinces of China and countries in the region, as well as international speakers discussed developments, challenges and practical and achievable solutions to enhance access to legal aid services, covering three main topics: quality assurance, effective and holistic legal aid systems, and ensuring equal access to legal aid. Participants found that all three topics were interlinked, and that countries — while adopting different models of legal aid delivery — faced similar challenges in providing effective and high-quality services. Similar aspirations were shared among countries: to ensure access to legal aid in all areas of the country, for all populations who are in need, and at all stages of the criminal justice process. The continued importance of implementing the United Nations Principles and Guidelines was acknowledged and reaffirmed, and participants discussed the use of technology to provide timely services, training and information; the creation of national support networks for providers; and a client-centred, holistic approach that looked beyond the criminal case, particularly for clients with vulnerabilities or specific needs, such as persons with disabilities.

* E/CN.15/2018/1.

** This document has not been edited.

¹ General Assembly resolution 67/187, annex.



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I. Introduction

1. The Seminar “Access to Legal Aid in Criminal Justice Systems — Quality Assurance, Holistic Services and Equity in Access” was organized jointly by the Ministry of Justice of the People’s Republic of China (hereinafter referred to as “China”) and the United Nations Office on Drugs and Crime (“UNODC”) and hosted by the Guangdong Provincial Department of Justice in Guangzhou City, People’s Republic of China, from 24–25 January 2018. Its objectives were to allow for an exchange of information, experiences and lessons learned in implementing the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*² (“UN Principles and Guidelines”) in a holistic and effective manner. Discussions were held on core features and structures necessary to ensure provision of effective and high-quality legal aid services, on ensuring meaningful access to legal aid for groups with specific needs and standards developed in this regard, as well as on specialized skills that providers should develop to be able to successfully handle such cases.³

2. It is the second Seminar on legal aid that was jointly conducted by China and UNODC, following the first Seminar held in 2015 in Kunming, Yunnan Province, which focused on how key provisions of the UN Principles and Guidelines were implemented in different jurisdictions across the world.

3. Each main topic of this Seminar — quality assurance, holistic services, and equity in access — was discussed in a separate session; yet it was acknowledged by participating experts that all three topics were very much interlinked. Ensuring that legal aid providers have the necessary skills to cater to the needs of specific groups is part of providing high-quality legal aid, including a holistic approach that focuses on the needs of clients, and applies a multi-sectorial approach to addressing these needs, in some cases beyond the criminal case, for example regarding access to health care or other services. Measures to ensure effectiveness of legal aid delivery systems by improving their management have a direct impact on the quality of the overall performance of the criminal justice system. Therefore, quality assurance of legal aid services was at the heart of the Seminar’s deliberations, and was considered at the level of institutions, individual providers, and specific groups of clients.

4. The Seminar was attended by more than 80 legal aid experts, including national experts from 15 Chinese provinces and municipalities, lawyers’ associations, research institutions and universities such as the China University of Political Science and Law (“CUPL”), as well as representatives of countries in the region, namely Indonesia, Myanmar, Pakistan, Thailand and Viet Nam, international speakers from Argentina, Finland, Israel, the Netherlands, South Africa and the United Kingdom/Scotland.

5. After an introductory session on developments at the national and international level, the structure of the Seminar followed the three main topics, and included presentations delivered by national and international experts, panel discussions, as well as small working groups at the end of the Seminar, where participants discussed the different topics in greater detail in relation to a newly introduced duty lawyer scheme whose implementation had begun across the country. On the day after the conclusion of the Seminar, international and regional experts visited the Guangzhou Municipal Legal Aid Department, the first of its kind opened in China in 1995, and the Legal Aid Station at the Haizhu District Court.

² General Assembly resolution [67/187](#), annex.

³ Reference made to systems, practice and concrete examples for measures in different countries is based on the information shared and discussed by the participating experts from China and a variety of other jurisdictions. Reference made to academic research and articles is based on discussions and materials included in the background information for participants.

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and key developments since their adoption

6. In December 2012, the General Assembly adopted the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, following a long process of deliberation and development of the instrument by national experts from different jurisdictions. The key importance of the UN Principles and Guidelines as a new instrument was that it recognized for the first time that States had an obligation to establish a national legal aid system, and to ensure meaningful access to effective legal aid at all stages of the criminal justice process. Beyond their declarative value, the UN Principles and Guidelines provide a detailed framework for discussion at the international level on how to further develop core elements of effective legal aid in criminal cases⁴, and generated a wide discussion on the importance of legal aid as a component of access to justice, and for guaranteeing human rights in the criminal justice system.

7. Since the adoption of the UN Principles and Guidelines, discussion of how to develop and improve legal aid standards and practical service delivery continued in multilateral fora. In June 2014, the first International Conference on Access to Legal Aid in Criminal Justice Systems was convened in Johannesburg, South Africa, gathering over 250 participants from 67 countries. The Conference provided, for the first time, an opportunity for practitioners from all over the world to discuss matters of common interest, and resulted in the issuing of the “Johannesburg Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.”⁵

8. Some of the international instruments dealing with related subject matter adopted in the following years included provisions referring to legal aid as an important element of fair criminal justice systems, and access to justice for specific groups. For instance, in April 2015 the Doha Declaration adopted by the 13th United Nations Congress on Crime Prevention and Criminal Justice⁶ reaffirmed United Nations Member States’ commitment and strong political will to support effective, fair, humane and accountable criminal justice systems and the institutions comprising them. Member States committed to endeavour “to review and reform legal aid policies for expansion of access to effective legal aid in criminal proceedings for those without sufficient means or when the interests of justice so require.”⁷ The Declaration also recognized the importance of legal aid in reducing prison overcrowding, and recommended to promote and strengthen international and regional cooperation to further develop the capacity of national criminal justice systems.

9. In July 2015, the Committee on the Elimination of Discrimination against Women (CEDAW) adopted General recommendation 33 on women’s access to justice⁸, which mentions legal aid throughout as an important tool to remove economic barriers to accessing justice and guarantee women’s rights, and addresses legal aid as a specific area of attention for Member States. Later that year, the *United Nations Standard Minimum Rules for the Treatment of Prisoners* were revised and adopted as the Nelson Mandela Rules⁹, which now include several provisions addressing prisoners’ access to effective legal representation and aid, recognizing, for

⁴ There are 13 principles and 26 guidelines, covering a myriad of topics and providing detailed suggestions for Member States for developing an effective, fair and sustainable legal aid system. All subsequently mentioned individual principles and guidelines are those of the UN Principles and Guidelines, unless otherwise marked.

⁵ Available online at:

http://www.unodc.org/pdf/criminal_justice/2014_Johannesburg_Declaration_on_Implementation_of_UNPGLA.pdf.

⁶ General Assembly resolution 70/174, annex.

⁷ Paragraph 5(c).

⁸ CEDAW/C/GC/33.

⁹ General Assembly resolution 70/175, annex.

example, that prisoners, including untried prisoners, should have access to effective legal aid, and should have adequate opportunity to consult with a legal aid provider.¹⁰

10. In September 2015, United Nations Member States adopted the 2030 Agenda on Sustainable Development.¹¹ Aiming to build on the Millennium Development Goals¹² and additional, new areas, the Agenda provides for a plan of action guiding its implementation by way of 17 Sustainable Development Goals (“SDGs”) and related targets and indicators. SDG 16 is dedicated to the promotion of peaceful and inclusive societies, the provision of access to justice for all, and building effective and accountable institutions at all levels. Indicators for achieving the Goal include 16.3.2, “the number of unsentenced detainees as a proportion of overall prison population.”¹³ A key element of achieving success in reducing these figures is the provision of legal aid to detained persons, in particular at early stages of the criminal case.¹⁴

11. In April 2016, in the outcome document of the Special Session of the United Nations General Assembly on the World Drug Problem, Member States committed to ensure timely access to legal aid for persons in contact with the criminal justice system in drug-related cases.¹⁵ In May 2016, at its twenty-fifth session, the Commission on Crime Prevention and Criminal Justice adopted resolution 25/2, entitled “Promoting legal aid, including through a network of legal aid providers,” recognizing once more the importance of national, regional and international experience sharing and cooperation. In November 2016, the Second International Conference on Access to Legal Aid in Criminal Justice Systems was held in Buenos Aires, Argentina, providing yet another opportunity to advance discussion of key issues on the provision of legal aid.¹⁶

12. To have a clear understating of States’ needs and priorities in the area of legal aid, UNODC and the United Nations Development Programme (UNDP) conducted the Global Study on Legal Aid, which was published and launched at the International Conference in Buenos Aires. It aimed at establishing a baseline understanding of how the right to legal aid has been defined and addressed around the world, and is the international community’s “first attempt to collect data on and present a comprehensive overview of the state of legal aid globally.”¹⁷ Some of the findings of the Study that are relevant to the topics of this Seminar pertained to the fact that many countries recognize the right to legal aid for criminal defendants who cannot afford a lawyer, but the availability and quality of legal aid provided in practice was limited, particularly as regards specialized and targeted legal aid provision for specific vulnerable populations. The Global Study also found that there was a gap in access to legal aid services in rural areas away from urban centres, with nearly half of the responding Member States indicating that the acute shortage of lawyers outside urban areas was one of the biggest impediment facing the delivery of legal aid services. The Global Study in a set of recommendations strongly encouraged global sharing of experiences, lessons learned and good practices.

¹⁰ Rules 41, 61, 119 and 120 of the Nelson Mandela Rules.

¹¹ General Assembly resolution 70/1.

¹² General Assembly resolution 55/2.

¹³ Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development, General Assembly resolution 71/313.

¹⁴ Principles 3 and 7.

¹⁵ General Assembly resolution S-30-1, annex.

¹⁶ A report on the outcome of the Conference was presented to the Commission on Crime Prevention and Criminal Justice (CCPCJ) at its 26th session in May 2017 as E/CN.15/2017/CRP.2, with the Conference Declaration (the Buenos Aires Declaration) attached in all of the official languages of the United Nations, as well as in Portuguese. Available online at http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_26/E_CN15_2017_CRP2_e_V1703525.pdf.

¹⁷ UNODC/UNDP, Global Study on Legal Aid, Global Report available online at http://www.unodc.org/documents/justice-and-prisonreform/LegalAid/Global-Study-on-Legal-Aid_Report01.pdf; and Country Profiles, available online at http://www.unodc.org/documents/justice-and-prison-reform/LegalAid/GSLA_-_Country_Profiles.pdf.

13. To assist Member States in the implementation of the UN Principles and Guidelines, UNODC developed specific tools, such as “Early access to legal aid in criminal justice processes: a handbook for policymakers and practitioners,”¹⁸ as early access had been identified as a priority area for interventions in the months right after the adoption of the United Nations Principles and Guidelines. The handbook includes a detailed framework for establishing early access schemes and a suggested outline for trainings. UNODC also developed the UNODC Model Law on Legal Aid in Criminal Justice Systems with Commentaries¹⁹, a tool to assist Member States in reviewing and revising existing or developing new laws on legal aid in line with the UN Principles and Guidelines. These tools have been translated into several languages, including Chinese, allowing participants of the Seminar to use them as sources of information while preparing for the event.

II. Recent developments in the region

A. Legal aid in China

14. As mentioned before, the first Seminar on criminal legal aid in China organized jointly by the Ministry of Justice and UNODC was held in Kunming in 2015. The Seminar concluded with several recommendations for improving access to legal aid in China, which, among other areas, addressed the need for continued exchange of experiences among Member States on good practices in implementing the UN Principles and Guidelines at the national level. Right after the Seminar in Kunming, several resolutions on legal aid were adopted by Member States, tools were developed and the Global Study was launched, so the 2018 cross-regional Seminar in Guangzhou provided an opportunity to share the most recent developments, progress and lessons learned in China and other jurisdictions.

15. The legal framework for legal aid in China was established in 1996 in the Criminal Procedure Law and the Lawyer’s Law of China, and later on complemented by the Regulations on Legal Aid (2003). In 2012, the Criminal Procedure Law was revised to expand the coverage of legal aid. Assignment of legal aid lawyers to cases is done by provincial, municipal or local legal aid centres, after being informed by the police, the prosecution or the court, and on the basis of an application by a client that meets the eligibility criteria. Currently there are more than 3000 legal aid centres throughout China.

16. For overall legal reform in China to be successful and sustainable, the existence of an accessible, effective, and credible legal aid system was key, as a fundamental, integrated part of the overall justice system. Legal aid has become an essential element of recent judicial reform, and it is developing in parallel and linked with other components of on-going reforms. Legal aid providers played an important role in the implementation of new policies, including through piloting of a lawyers-on-duty schemes throughout the country in environments such as courts and detention centres, streamlining of means test application to increase efficiency, and providing improved online and phone services. The Government plans to further develop the national legal aid system by expanding its scope of coverage, and continuously improving the quality of services, through establishing quality standards and conducting peer review, as well as expand the scope and frequency of trainings, and increase the available budget for legal aid. The need for training is planned to be addressed by offering a

¹⁸ Available on the UNODC website in English, Chinese and Vietnamese. In 2010, prior to the development of the UN Principles and Guidelines, UNODC also developed a handbook on improving access to legal aid in Africa in response to ECOSOC resolution 2007/24. The Handbook compiles promising practices in Africa, and some were included in the UN Principles and Guidelines, e.g. paralegals.

¹⁹ Available online on the UNODC website at https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Model_Law_on_Legal_Aid.pdf.

variety of online tools, and creation of a national network of experts that can be accessed by all legal aid providers.

17. Participants were introduced to the mandate of the recently established National Institute of Legal Aid (NILA/CUPL), the first think tank institute on legal aid in China, which will focus on strengthening research of important academic theories, as well as legislation, policies and challenges in the implementation of quality services, and is supposed to provide both theoretical and technical support to the development and improvement of the national legal aid system. It is also supposed to serve as a platform for cooperation between academic institutions and legal aid practitioners, including through capacity building measures.

B. Legal aid in other Asian countries represented at the Seminar

18. Experts representing legal aid entities from Indonesia, Myanmar, Pakistan, Thailand and Viet Nam shared experiences from their domestic systems, highlighting common challenges and presenting locally applied solutions. Common challenges identified by these experts were the overall lack of qualified lawyers to provide services, and a shortage of funding to ensure sustainable and high quality legal advice and representation. In recent years, new legislation on legal aid was adopted in most countries in the region, and implementation in practice is under way; below, a short overview of some innovative approaches and developments is presented.

19. In **Indonesia**, to increase coverage, the government encourages pro bono services provided by lawyers particularly in cases of so-called “sandwich people,” persons who are neither “poor enough” to be eligible for legal aid, nor “rich enough” to pay for a lawyer. Indonesia also promotes the use of smartphone applications and online services to expand the reach and quality of legal aid services, including through online applications that combine case management and data collection, monitoring and reimbursement, as well as applications that provide legal information or match a client with a lawyer based on factors such as geographic location or substantive nature of the case. To enhance services, a number of stakeholders from the public and private sector, as well as the judiciary, are working together in developing regulations, and increasing the legal aid budget.

20. In **Myanmar**, the right to legal aid used to be limited to offences punishable by the death penalty, and services were delivered by contracted lawyers. In 2016, a new law on legal aid was enacted, and a structure of legal aid bodies was created at different administrative levels. Regulations for implementation of the law were issued in 2017. Once established, the individual legal aid bodies should handle applications for legal aid, provide information, and other related services.

21. In **Pakistan**, equal access to justice as part of a fair trial was already recognized in the constitution and implemented through domestic law in the 1970s. Various forms of free legal assistance are provided by different actors, including legal aid services for victims of specific offences, such as trafficking in human beings, kidnappings, or domestic violence.

22. Legal aid in **Thailand** is guaranteed by law, and legal aid is provided by justice clinics across the country, serving each of the provinces. Legal aid providers include retired government officers with relevant experience. Besides traditional face-to-face meetings, information and consultation services can also be provided through call centres, chat applications and video-conferencing. The needs of vulnerable groups are addressed, for instance, in order to better provide advice to foreign legal aid beneficiaries, providers receive training in English, Chinese and other Asian languages, and a criminal dictionary for Thai-Chinese was drafted in cooperation with universities.

23. In **Viet Nam**, an advanced law on legal aid was adopted in 2017, replacing the existing law of 2006 and expanding the groups of beneficiaries to include, among others, children under the age of 16, ethnic minorities, the elderly, victims of domestic

violence, victims of trafficking in persons, and persons living with HIV/AIDS. One particular challenge that was identified is the high illiteracy rate of the population, which the Government is working on addressing in the design of awareness raising campaigns to inform people of their right to legal aid and the mechanism to access services.

III. Substantive sessions

A. Holistic and effective provision of legal aid services

24. Implementing the UN Principles and Guidelines in a holistic and effective manner implies that reform processes consider the interplay between key elements of the legal aid system²⁰, and the impact that introducing changes to one component of the system can have on other components. As discussed extensively elsewhere, criminal justice reform is a long-term project that should be planned in cooperation with all the relevant stakeholders and implemented gradually, for example through pilot schemes, to test different models of delivery of services. It should take into account the unique context of each country, and be aligned with other reform efforts, especially within the legal system or the legal profession.

25. The selection of a specific delivery model necessarily influences related choices: who are the legal aid providers, and how is their work organized and monitored, and how can it be accessed by the public? While the UN Principles and Guidelines do not advocate any specific model, according to Principle 2, States should ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. This section provides an overview of different approaches to legal aid delivery, and Seminar discussions of lessons learned and good practices in ensuring that legal aid services are effective and accessible nationwide, regardless of which delivery model is applied.

Effective legal aid systems

26. Principle 7 of the UN Principles and Guidelines holds that “States should ensure that effective legal aid is provided promptly at all stages of the criminal justice process. Effective legal aid includes, but is not limited to, unhindered access to legal aid providers for detained persons, confidentiality of communications, access to case files and adequate time and facilities to prepare their defence.” Guideline 11, entitled “Nationwide legal aid system”, provides a list of additional elements of an effective national legal aid system. The term “effective legal aid system” could therefore be understood to include the following elements:²¹

- It reaches all members of society, especially vulnerable populations, and all regions of the country, including rural areas;
- It protects legal rights throughout all stages of the criminal justice process;
- It provides information to beneficiaries on the right to legal aid and how to obtain it;²²
- It provides legal aid providers with access to clients and case files, and adequate time and facilities to prepare the defence;²³
- It institutionalizes coordination between justice agencies and other professionals such as health, social services and victim support workers for effective and holistic case management;²⁴

²⁰ For example, legal aid bodies, legal aid providers, eligibility criteria, application procedures, and oversight measures.

²¹ Additional elements were developed in the UNODC Model Law, commentaries, p. 46.

²² Principle 8.

²³ Principle 12.

²⁴ Guideline 11, para. 55 (c).

- It creates partnerships with different types of legal aid providers, and incentives for lawyers to take part in legal aid provision throughout the country;²⁵
- It creates simplified procedures and regulates and monitors effective ways to assist legal aid applicants in the preparation and submission of applications.²⁶

27. Measures to increase effectiveness of legal aid services should continuously be developed and applied, for example by way of research and studies²⁷, investigations, and pilot programmes or projects. In this session, speakers provided examples of practical approaches in different legal systems, and described the key challenges in their domestic context. Some speakers noted that in their view, effectiveness also implied high quality of services and provision of the most effective defence, as even if complete coverage of legal aid needs could be achieved, poor quality of services would mean that legal aid ultimately cannot be considered as effective.

Nationwide legal aid system

28. One of the ways to enhance nationwide coverage is to establish a national legal aid body that manages service delivery.²⁸

29. Nationwide outreach has been achieved in some countries; for instance, by putting in place a model in which the main providers of services are lawyers employed by a national body at various administrative or geographic levels, and a minimum of services are contracted to outside lawyers. This model includes a carefully planned network of offices, which is reviewed on an on-going basis in terms of individual offices' outputs, local demand, and level of coverage. If a country has specialized courts that deal with certain groups of victims, offenders, or offences (such as persons below a certain age threshold; or sexual offences), ideally, specialized lawyers should be employed by the national offices to provide services for cases handled by specialized courts.

30. A number of countries have implemented public defender systems, a state agency established by the constitution or other relevant domestic law, that has varying levels of responsibility, functional autonomy and financial independence.²⁹ Independent from government structures and the administration of the judiciary, public defender offices could organize the system of delivery in a manner that best serves the clients, as they usually have a certain flexibility to respond to emerging needs. Public defender offices at lower levels could be created according to the size of population or litigation rates, among other factors. In addition to cooperation among public defenders themselves, cooperation could also be established with private lawyers, advanced law students and other stakeholders, to address the needs of particular groups or areas, such as poor neighbourhoods or those affected by crime and violence in a disproportionately high manner. This way, structural barriers could be removed, and access to justice for the most vulnerable groups of society became easier to facilitate, according to their specific legal and social needs. Toward this end, holistic services could include information sharing, consultation and assistance, or referring a case to a different responsible entity, for instance in order to grant the beneficiary with legal representation before administrative authorities or tribunals.

31. Other countries have opted for establishing by law an independent legal aid board. The independent organisation and control makes the system easier to manage than systems embedded in government structures, as most boards enjoy a dedicated — in the best case open-ended, if can be afforded — budget to allow for flexibility in meeting the demands of clients. An example discussed at the Seminar applies a

²⁵ Principle 14.

²⁶ See for example UNODC Model Law, Article 31, that recommends that the legal aid body assist the applicants: 31.3. "The Legal Aid Authority shall regulate and monitor effective ways to assist any applicant requiring assistance, especially vulnerable persons, in the preparation and submission of legal aid application."

²⁷ See Guideline 17 that promotes research to monitor effectiveness.

²⁸ Guideline 11, para. 59.

²⁹ For an overview, please refer to the Handbook on early access to legal aid, p. 73 and following.

three-tier system: the zero line is provided through online services, for instance covering problem diagnosis, orientation and information on different ways to solve a legal problem, and providing examples for standard letters and documents. The first line is provided at service counters, which cover initial advice and diagnosis free of charge, and serve as a triage stage. The second line includes private lawyers and mediators for extended consultation and litigation. At this stage, beneficiaries can be asked to pay an income-dependent contribution for services received. In addition, the board arranged a duty solicitors' scheme for persons held in custody, which provides services to suspects, foreign citizens and psychiatric patients.

Sustainable legal aid system — management, funding, human resources

32. Sound legal aid systems can effectively regulate and guarantee smooth delivery of legal aid services. In one example discussed at the Seminar, a country issued policies on legal aid at lower administrative levels, involving all relevant government bodies of the area. These policies set up a lawyers-on-duty system for legal aid provision and the standards for their work; as well as improved the lawyers' fees, and coordinated pilot projects on ensuring full coverage of legal aid at all stages of the criminal justice system. Human resources and stable funding were crucial for making the introduced system effective, so they were prioritized to ensure continuous development of the system to be able to meet the increasing needs of the population.

Access to legal aid at all stages of the criminal process, particularly early stages

33. Principles 3 and 7 describe States' obligation to "ensure that effective legal aid is provided promptly at all stages of the criminal justice process, [which] includes, but is not limited to, unhindered access to legal aid providers for detained persons, confidentiality of communications, access to case files and adequate time and facilities to prepare their defence." Guidelines 4–6 include specific practical measures to ensure such access at the pre- and post-trial stage, as well as during proceedings.

34. A particularly important stage identified by experts was at the first contact of persons with the criminal justice system, in police custody or detention. The UN Principles and Guidelines emphasize the importance of early access to legal aid, the impact of which on human rights and on the fairness of the process has been widely recognized.³⁰ Guideline 3 indicates that legal aid providers should be present during questioning or interviewing, which provides that an interview should not start until the legal aid provider arrives. Guideline 4 establishes States' obligation to facilitate legal aid providers' prompt access to police stations, places of detention, and prisons.

35. The Global Study on Legal Aid found that across all regions and development levels, defendants have a right to legal aid upon being charged with a criminal offence, upon arrest or detention on criminal charges, and when sentenced to imprisonment.³¹ It also indicates that in more than half of responding Member States, an entitlement to legal aid exists from the moment that a law enforcement representative restricts the suspect's or defendant's freedom; however, according to data provided, in practice this right is enforced only in one third of responding Member States.³²

36. One of the practical ways to ensure nationwide representation at all stages of proceedings is through a duty lawyer scheme, under which a legal aid provider is always available to provide advice and assistance to persons held in police stations or at court. Such duty lawyers may be embedded in police stations, places of detention, prisons and courts, or based in their offices — or homes if during the night — where they can be easily contacted to take a case. There is a growing practice in different countries on the use of duty lawyers.³³ This scheme could be used in conjunction with

³⁰ Handbook on early access to legal aid; see also Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.

³¹ Global Study on Legal Aid, p. 111.

³² Global Study on Legal Aid, figure 49.

³³ See Handbook on early access to legal aid, for instance pages 70–71.

other schemes, such as by employing public defenders. Legal aid institutions could appoint lawyers to the courts, prisons or detention centres, who provide legal advice and guidance on legal aid applications, draft documents, and raise awareness. Participants provided input on improving the effectiveness of duty lawyers' work by focusing on localizing of services so their offices are physically "closer to the clients." Others mentioned it was important to clarify the duties of lawyers and the types of services they could provide; improving coordination and cooperation mechanisms among actors in the criminal justice system; improving the supervision and administration of the system; and ensuring that necessary funding was made available for a sustainable and smooth operation of the scheme.

37. Among the services mentioned by participants that could be provided by duty lawyers were, *inter alia*, advice on selection of procedure; appeals and complaints against torture and unlawful obtaining of evidence; as well as in the process of plea bargaining to make sure that clients understand the nature and consequences of their confession in order to voluntarily plead guilty. The lawyer on duty should be able to observe the interrogation of their client, have full access to relevant legal documents and evidence, witness the signature of statements, and express their opinion on matters such as charges, the application of laws, and recommendations for sentencing.

Improved access to legal aid through simplified procedures and electronic tools

38. Legal aid delivery systems can also become more effective by simplifying administrative procedures related to evaluating the eligibility of applicants. In countries where it has been decided that a majority of the population should enjoy state-funded legal aid, applying a complex procedure to assess means is not necessary and will only delay the provision of legal aid.³⁴ In most systems, the burden of proof of eligibility rests with the applicant, and is determined according to procedures that are often complicated and time-consuming. In the best case, means test procedures are easy to understand and do not involve many stages. Legal aid administrators may opt to require verification of eligibility through existing official documentation that indicates the person's economic status, such as pay stubs and tax returns, or simply accept a declaration by the applicant and presume that this information is accurate, to be able to initiate service delivery without delays that may have an impact on the outcome of the case.³⁵

39. In one example provided, defendants who failed to provide proof of the economic status of their family in time, due being imprisoned and thus being unable to obtain necessary information from close relatives and other persons in the household, could still be regarded as meeting the financial threshold for legal aid, depending on the nature of their cases. States can also opt to have specific rules apply to specific groups; for instance, in the case of juvenile victims, legal aid agencies in one country were exempted from reviewing the economic status of these persons' families altogether.

40. In one country example, private lawyers working with the legal aid board needed to submit the application for a legal aid certificate on behalf of their clients. In order to simplify procedures, the board introduced a method for such applications, which implied that the board and the lawyers would work together on the basis of transparency, trust and mutual understanding. Applications for legal aid certificates were subsequently processed electronically, complemented with electronic guidance tools, which saved time and made legal advice more accessible to those with a low income, who still had access to the internet. In another country, effective services included telephone and video counselling, an electronic application process, an electronic appointment system and an online chat service. The Ministry of Justice appointed experts to assess whether it would be feasible and more effective to further centralize administrative tasks performed by the legal aid districts to a single administrative unit of a national legal aid and public guardianship agency. In a third

³⁴ UNODC Model Law, commentaries, pages 176–177.

³⁵ UNODC Model Law, commentaries, p. 176.

country, the government used phone applications and online services to expand the access to legal aid, such as through an application to match lawyers with applicants through an online registration desk that took into consideration their geographic location.

41. Introducing mediation to legal aid programmes was another measure discussed that could improve the effectiveness of criminal justice systems, as it saves litigation costs and can, as the best possible outcome, achieve a result for the offender and the victim that they both consider as “just.” Defence lawyers can also inform clients on restorative justice options, if appropriate in the national system. A restorative justice process “means any process in which the victim and offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.”³⁶ Lawyers can explain potential benefits and ensure their clients’ informed consent, in case they decide to participate in such processes. Mediators can be employed under the national legal aid programme in a manner appropriate to the system that is in place; for instance, in public defender systems, defenders can be involved in mediation and in restorative justice processes in appropriate cases.

B. Ensuring high-quality legal aid services in criminal cases

42. Member States responding to the Global Study on Legal Aid identified the improvement of the quality of legal aid services as their number one priority.³⁷ This topic was a core issue of the Seminar, which focused on institutional and individual criteria, along with quality control as seen from the perspective of the legal aid system. Experts discussed approaches to accreditation and ensuring quality legal education and continuing development of knowledge and skills, including criteria for admission to the bar, and the individual skills of providers. They also touched upon monitoring and evaluation mechanisms, particularly within institutional legal aid providers such as public defenders’ offices, to reinforce high quality of services.

43. The UN Principles and Guidelines focus on quality assurance from the perspective of the knowledge and skills of the individual legal aid provider. Principle 13 requires States to put in place mechanisms to ensure that all legal aid providers possess the education, training, skills and experience that are commensurate with the nature of their work, including the gravity of the offences dealt with, and the rights of women, children and groups with specific needs.

44. For the legal aid system as a whole, monitoring and evaluation mechanisms should be in place to oversee that the selection and performance of providers meet relevant standards and criteria. The UN Principles and Guidelines recommend the development of monitoring and evaluation mechanisms to assess and continuously enhance the quality of services provided. Approaches to ensure this in practice vary from country to country, and there is no internationally agreed-upon model for such monitoring and evaluation mechanisms, or measures.

45. During the Seminar, experts focused on particular measures as recommended by the UN Principles and Guidelines, such as establishing criteria for accreditation of the legal aid providers (Guideline 15); establishing quality standards for legal aid providers and paralegals (Guidelines 14 and 16); providing adequate training, and supervision by qualified lawyers (Guideline 14 — for paralegals). These measures can be regarded as steps in the professional development of the individual legal aid provider, beginning with the determination as to whether or not he or she meets the criteria to become a legal aid provider; moving on to evaluate ongoing performance in line with quality standards adapted, for instance, to the type or gravity of the offence; and supplemented by continuing education and training, and feedback on performance by supervisors or the client. The performance can be assessed over time,

³⁶ Basic Principles on the use of restorative justice programmes in criminal matters, Economic and Social Council resolution 2002/12, annex.

³⁷ Global Study on Legal Aid, p. 130.

to see whether there is improvement or where there would be a need for more or more specific training or supervision.

Ensuring high-quality legal aid services in practice: findings of the Global Study on Legal Aid

46. The Global Study reveals that when asked whether there is a mechanism in place to monitor the quality of legal aid services, responding Member States most frequently cited the bar association as the monitoring institution. A fifth of Member State respondents said that the legal aid board or the Ministry of Justice performed monitoring functions. In the majority of responding Member States, establishing performance standards and monitoring the delivery of legal aid was a formal responsibility of legal aid authorities. In practice, however, the measure for monitoring quality is mostly done through review of complaints received from legal aid recipients, which is not a very useful indicator of quality, as most legal aid clients lack the time or incentive to draft a comprehensive complaint, and do not have objective tools to assess the quality of services they received. A quarter of responding Member States used satisfaction surveys completed by legal aid recipients³⁸, yet this measure is equally challenging, as it depends very much on the type of questions asked and the subjective assessment of clients.

47. According to the findings of the Global Study, the following are key factors for ensuring high-quality legal aid services:³⁹

- Establishing caseload limits to prevent overloading providers with work volume that precludes individualized attention to each client and his or her legal needs;
- Negotiating for time away from proceedings, and financing to guarantee that every provider undergoes periodic training on advocacy skills and legal updates;
- Activating practicable systems of practice management, including training senior practitioners to be effective, proactive supervisors who can actively mentor legal aid providers on a day-to-day, case-by-case basis;
- Negotiating for cooperation from State justice actors on scheduling and logistics to enable providers to use time efficiently by consolidating provider's procedural appearances thereby cutting down on travel time from office to court and other agency locations and back;
- Gaining support from State agencies to allow sufficient time for providers to prepare their actions on behalf of their clients;
- Developing case management and statistical reporting programming to save time and enable legal aid operations to track needs and cases, and produce reports documenting trends in legal aid practice, expenditures, outcomes and data substantiating budget processes;
- Procuring sufficient State funds for facilities and services to support the defence of clients' rights, from office space and technical supplies like printers, computers and connectivity, to clerical assistance, social work services, and access to independent investigators and forensic experts;
- Establishing and ensuring adherence to performance and qualification standards for legal aid providers;
- Supporting peer reviews where a team of practitioners' complete periodic observations and "spot checks" of providers' work, in the form of reviews of files, interviews with practitioners and/or their clients, as well as observation of work in courthouse public proceedings;

³⁸ Global Study on Legal Aid, p. 168.

³⁹ Global study on Legal Aid, box 22, p. 158.

- Advocating for participation by legal aid providers in legislative and administrative processes that affect the practice of defending the rights of the poor and vulnerable.

Monitoring and measuring quality of legal aid services

48. For the purpose of discussion at the Seminar, it was decided to use the model developed by Prof. Alan Paterson and Prof. Avrom Sherr as a framework for discussing quality of legal aid services, which analyses quality under four main groups of indicators or proxies for quality: inputs, structures, process and outcomes.⁴⁰ In their view, input and structural measures are easy to measure, but are poor proxies for quality of legal services; whilst process and outcome indicators are harder to measure but are better measures of quality of the legal services provided.

49. **Input measures** refer to the education, skills, knowledge, qualifications, resources, and so forth that the professional brings to practice before the work begins. Such measures are required both in a legal aid system that uses contract lawyers, and in legal aid systems that hire salaried lawyers or public defenders. In both cases, accreditation criteria should be met, but in a system where lawyers are part of the staff, their supervision and ongoing training are easier to ensure. One may argue that such measures are slightly more important in contract-lawyer systems, as lawyers cannot be supervised as easily on a daily basis, as they can in a public defender system.⁴¹ Input measures could also include entry level exams for public defenders, administered by the highest instance — for example the Federal or National Public Defender’s Office — and based on regulations or similar written rules. Input elements are usually relatively easy to measure, for instance if the applicant has a law degree, passed a practical training test, can provide certification of specializations, as well as the availability of resources are all matters which are open to objective measurement. However, scoring well on input measures cannot guarantee that the quality of performance or outcome will be excellent.

50. **Structure** refers to the management and operating system including procedures for record-keeping, complaints procedures, training and supervision and staff development policies. These facilitate quality performance of the individual legal aid provider. One may look at them as the organizational measures, which will again vary greatly between different delivery models.⁴² Structural variables are only moderate predictors of likely quality of performance and outcome. Scoring highly on structural aspects tends to indicate that a legal aid provider will be more likely to perform competently and to achieve acceptable outcomes.

51. **Process** measures focus on the performance of work by legal aid providers “from the first point of entry into the system through the handling of the case and onwards to maintenance of files and documents.” As such, they encompass the appropriateness of the legal work done, its effectiveness, and its closeness to the stated wishes of the client (so far as these may be respected in all the circumstances). Therefore, they indicate the lawyer’s competence from fact gathering and legal analysis to client handling, advice and assistance and practice management.⁴³ A simplified way to establish such measures is through performance criteria for providers. Such criteria could be bundled in internal guidelines in a detailed manner, to address what is generally expected from a competent legal aid provider at different

⁴⁰ Peer Review and Cultural Change: Quality Assurance, Legal Aid and the Legal Profession. Prof. Alan Paterson and Prof. Avrom Sherr, ILAG 2017; Sherr, A. and Paterson, A. “Professional Competence, Peer Review and Quality Assurance in England and Wales and in Scotland” 45 (2008) Alberta Law Review 151.

⁴¹ Peer Review and Cultural Change: Quality Assurance, Legal Aid and the Legal Profession.

⁴² Ibid.

⁴³ Ibid. Process measures will usually include the quality of advice and information given to the client both in person and in correspondence; the quality of letters and other documents to the other side, to the court and to others (such as expert witnesses) involved in the process; the quality of decisions taken and advocacy, written and oral, carried out on behalf of clients. Indeed, process measures take into account the whole range of lawyering, from fact gathering and legal analysis to client handling, advice and assistance and practice management.

stages of the criminal justice process, when working on specific types of crimes, and with specific groups of clients. The assessment of lawyers' actions can be based on negative or positive criteria. Negative criteria may include the failure to record all material advice given to a client in a specific case or failing to keep comprehensive trial notes. Process variables are generally harder to measure than input and structural ones, but where this has been done, they are regarded as better proxies for quality of performance. Research suggests that the most effective ways of measuring process variables include observation, file review by peers and the use of "model" or standardized, simulated clients.

52. **Outcome measures** look at the outcome of the legal process, through peer review to assess the quality of the outcome, or a statistical approach to compare results in similar cases. The latter is more difficult to implement, considering that the factors that influence the outcome are various, and can be beyond the control of the individual provider. Outcome variables are amongst the hardest to measure satisfactorily. There are several reasons for this — the need to control for case bias in the distribution of cases between practitioners; difficulties in establishing a consensus on what constitutes a "good" outcome in a particular case; and the need to show that the "successful" outcome was actually achieved as a result of the efforts of the lawyer, and not as a result of other factors such as luck, a poorly prepared opponent, a weak judge and so forth. Additional outcome measures include case costs, expenditure of time, success rates and client satisfaction. Outcome measures may also refer to the ultimate goals of the overall quality programme, and can be informed by idealistic factors such as the organization's vision, or even the aspirations of the justice system or the wider government agenda.⁴⁴

Appointment of qualified defence counsel and continuing legal education

53. Appointment and selection of qualified counsel could be considered an **input** measure, whereas ongoing training and supervision is a **structure** measure. Such measures were used in all countries represented at the Seminar. For instance, in one country, measures were applied to optimize designation of lawyers, such as client-oriented selection by making use of a database on lawyers with all the relevant information about their training and specialization; selection based on the complexity and nature of the case; or selection of female lawyers to provide legal aid to female criminal suspects or defendants. Selection would also be based on continuity as a principle: unless there would be a special reason necessitating a change, the same lawyer would be designated to cases of the same legal aid recipient at all stages of investigation, examination by the prosecution, and the trial.

54. In a country using the public defender model, a dedicated law authorized the public defenders at district level to select specific lawyers, to ensure appropriate representation of defendants. Accordingly, within each of the branches there was an appointment department whose task was to ensure quality of representation by choosing the best available lawyer to represent each individual client. External lawyers hired had to submit written applications, fill out a form and submit relevant documents pertaining to their legal education and experience. All candidates were interviewed, and selected based not only on general legal skills, but also on the office's needs regarding specific fields of expertise, language skills, and areas of residence. The second step was the selection of a suitable lawyer to appear in a specific case. The two main criteria applied in this respect were the current number of cases handled by each external public defender, and matching the lawyer to the nature of the case and the client's needs, such as by language.

55. In another public defender system, the public defenders were magistrates, matched in hierarchy and payment with judges and prosecutors, with the same functional guarantees, such as security of tenure, salary intangibility and immunity to arrest. To become magistrates, they needed to pass a complex selection process that concluded with their appointment by the executive branch of the government, after

⁴⁴ Ibid.

the agreement on selected candidates was reached in the senate. A selection office published tenders for candidates, who completed a written text evaluated by a jury, followed by an oral exam that usually consisted of a motion or a closing statement before a court of appeals or trial court. The best three candidates were presented to an agreement commission in the senate to select the final candidate. Other lawyers working in the public defenders' office who do not have the status of a public defender, for instance with temporary contracts or at lower levels of service, needed to pass an exam every two years to ensure that their skills continued to match the requirements of service.

56. In a third country, strict criteria were applied to the selection of lawyers working for the legal aid board. Lawyers had to be members of the national bar association, and to become members they needed to go through audits, complete three years of traineeship, and commit to ongoing education and training.

57. Overall training for legal aid lawyers was an element of quality assurance in one country. To support the development of standardized training programmes for legal aid lawyers, video training courses on a variety of issues were developed. A leading university in the country worked with legal professionals and lawyers to develop serial standardized training courses, and based on materials, special trainings for legal aid lawyers from various areas across the country were held in cooperation with the ministry of justice. Trainers included professors from the law school, as well senior experts from different government sectors such as the prosecution or prison administration, judges from the highest national courts, as well as senior and highly experienced lawyers.

58. One country also established a national online support platform, which aimed to provide remote support to legal aid lawyers with options for legal research, online legal consultation, and for connecting with researchers to obtain expert advice on difficult legal problems.

59. In another country, to maintain the quality of services provided by individual lawyers in the public defender system, ongoing mandatory training was provided four times a year to keep lawyers up to date on current legal developments, as well as advances in non-legal disciplines relevant to criminal litigation. In addition, a site for the external lawyers was launched that included legal information, catered as much as possible to the specific professional needs of the legal aid providers. Once a month the public defender's office published a journal that included articles and updated information on legislation, case-law and relevant legal literature, and once or twice a year, the office held a conference in collaboration with one of the country's law schools.

60. In another country that applies the public defender model, all employees of the public defender's office must complete a certain number of annual training hours. Training activities organized by a specialized unit covered four types of competences: technical competences (the knowledge of the criminal and procedural law, human rights, litigation techniques, oral and written argumentation); relational competences (development of the ability to manage conflicts, team work and leading groups); functional competences (the ability of organizing work, decision making and management of information); and professional competences (professional ethic and permanent learning). In addition, teleconferencing was used to enable all offices across the country to have access to conference discussions and trainings delivered to their colleagues in the central office in the capital.

Ensuring high-quality legal aid services: setting standards

61. The approach to setting quality standards in any given legal system will depend upon how legal aid is organized and delivered. In particular, it will depend upon: (a) whether there is a legal aid body responsible for administering legal aid; (b) whether there is a contracting relationship between the legal aid body and the legal aid service providers; and (c) whether legal aid is provided through a public defender service. In countries where legal aid services are provided by contracted lawyers,

quality standards could be built into the contracts, and contractual mechanisms can be used to ensure that legal aid services are delivered in accordance with those standards. A similar approach could be taken where legal aid services are provided by a public defender service. In the absence of such arrangements, quality assurance may be left to bar associations and individual legal aid service providers.

62. The relevance of standards will also depend upon the mode of delivering legal aid. For example, individual response times would be relevant in emergency or duty call-in schemes, but not to visiting schemes where lawyers periodically make themselves available to speak with clients; whereas ethical and quality standards apply to both types of schemes. While some content of specific standards would depend on the legal system, there are certain areas that need to be covered in all legal aid systems, for instance adherence to ethical standards, criteria for accepting cases, response times, methods by which advice and assistance are provided, clear and comprehensive written records, continuity of representation, and enforcing a prohibition on charging fees to legal aid clients where this is not allowed.⁴⁵

63. In one of the countries represented at the Seminar, efforts to set quality standards for legal aid providers resulted in the issuing of local standards in different parts of the country. They were applied so efficiently and successfully, that at present, national rules are being developed and reviewed by relevant national entities, which aim to be applied uniformly across the country.

Mechanisms for monitoring and evaluation

64. Peer Reviews, which may be considered an outcome measure, examine a number of files per practitioner chosen in a stratified, random fashion, using a range of chronological criteria for assessing each file. The criteria are subject of consultation with the legal profession; most criteria are client centred.

65. According to the aforementioned research of Paterson and Sherr, “peer review has [been] established [...] around the world and copied or piloted in a wide range of countries.” Peer review can be an expensive measure, as it can only be carried out by very experienced practitioners that have to be trained in order to objectively assess their peers. According to the experts — an opinion shared by some participants of the Seminar in whose systems peer review has been applied — “part of its purpose has always been to change the culture of practising lawyers to one of demonstrating continuing competence it has unexpectedly begun to be used to introduce other cultural changes e.g. to nudge practitioners towards a culture of continuing improvement, and to introduce a culture of client centred lawyering.”⁴⁶

66. In countries represented at the Seminar, experts have relied on a range of approaches to measuring quality, including testing different approaches in pilot projects using peer review, best practice guides and checklists, client satisfaction surveys or ensuring quality of operations by means such as increasing the provision of information and timely invoicing of legal aid. The availability of services has also been monitored through measuring waiting times, meaning the period that elapses from the point at which the client first contacts the office to make an appointment, and an actual meeting with an attorney.

67. One country recently introduced a completely electronic, year-round quality evaluation system with nationwide coverage, based on client satisfaction questionnaires and legal aid lawyers’ self-evaluation. Lawyers’ quality statements were based on the code of conduct for lawyers by the national bar association that indicated what can be expected of a good lawyer. Evaluation areas included appropriate and respectful treatment of clients, efficiency of the process and whether expenses were reasonable, and competence and expertise of the lawyer.

⁴⁵ For such non-exhaustive list, see Handbook on early access, pages 84–87. Some countries employ schemes in which more affluent clients of legal aid services are asked to make a small contribution to the costs of services they receive.

⁴⁶ Peer Review and Cultural Change: Quality Assurance, Legal Aid and the Legal Profession.

68. In a country that uses a mixed model with a main legal aid entity that has overall responsibility, a quality assurance unit was established to monitor quality of legal aid services. To ensure the integrity of the entire quality assessment programme, the need to introduce additional independent checks and balances was identified. The unit was located within a department responsible for internal auditing, and it reported directly to the CEO of the entity and the board. The unit was staffed from senior lawyers who have vast experience in their field, and audits were based on the same methodology and the same instruments that were used in all quality assessments performed within the organisation in daily operations. All findings were reported to the board, and were analysed to identify areas that needed to be improved in the delivery programme.

69. The components of the quality management programme in one of the represented countries included pro-active quality interventions designed to enhance the quality of the work activities of the lawyers so that the desired quality outputs could be achieved; quality monitoring meaning the actual checking of the work of the lawyer to see if it meets the set quality criteria; quality interventions which were informed by the results of quality reviews and audits; and evaluation of the effectiveness of the quality programme as a whole, based on data obtained from individual quality reviews and audits.

70. In a country using the public defender model, supervising the quality of representation was one of the core functions of the public defender's office, and considered one of the main justifications for its establishment. The structure of the office was intended to allow professional supervision by internal staff, the employed public defenders, of private lawyers contracted to represent clients. This role was established in a specific law. In all districts, special departments monitored the quality of representation, working under the national department responsible for quality control. This model had several advantages, in as it built expertise and professional knowledge and enabled to gain work experience; while at the same time gathering information on the work of all lawyers; developing uniform guidelines for lawyers; setting general policy standards and identifying key issues; and uniform auditing and control.

71. In a country employing a different model, a mechanism to monitor the handling of cases was created to ensure quality control throughout the legal process. The elements of this mechanism included appointing an internal supervisor to monitor the case, recording of all relevant information on case progress in the file, and ensuring that the number of cases litigated in court was proportionate to the work load of the unit. After the case was finalized, assessment and evaluation was conducted by seeking feedback from clients and judges. In addition, the case files were reviewed. Where the materials were found to be inaccurate or incomplete, they were returned for supplementary completion by the lawyer. This was followed by peer review. Finally, all findings were evaluated and a report was issued on the quality of the individual lawyer's work, which was shared with the bar association and the public. Lawyers that scored very low would be suspended from legal aid work some time, depending on the mistakes they made, or would have to undergo training.

C. Ensuring high-quality services that meet the needs of clients

72. The quality of services is of particular importance when beneficiaries with specific needs are concerned. According to Principle 10, "special measures should be taken when delivering legal aid to women, children and groups with specific needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. States should also ensure that legal aid is provided to persons living in rural,

remote and economically and socially disadvantaged areas and to persons who are members of economically and socially disadvantaged groups.”⁴⁷

73. Countries may prioritize the needs of particular groups according to local and national circumstances, or define additional groups they consider to be vulnerable. Accordingly, even though countries represented at the Seminar targeted different groups, and there were also similarities, which enabled fruitful exchange of experiences on innovative measures that have worked well in practice. For example, countries mentioned specialized legal aid services for the elderly (senior people), for persons with disabilities, for people belonging to ethnic minorities, and for pre-trial detainees, especially those granted bail but unable to pay it.

Holistic legal aid services

74. Meeting the needs of specific groups in conflict with the law requires a holistic approach to legal representation and legal aid. This implies a client-centred, community-oriented and interdisciplinary approach to criminal defence, aiming to best represent clients in court and address underlying issues affecting their contact with the criminal justice system. A holistic approach recognizes that the criminal procedure is often just one of many legal issues affecting the lives of clients, and that addressing these issues is relevant to the criminal process, could affect the results of the trial, and rehabilitation and social reintegration of the client. Advice and support in criminal cases should ideally also address related civil legal needs of clients, and be provided in partnership with different stakeholders as specifically encouraged by the UN Principles and Guidelines in Guideline 11, which encourages a multi-disciplinary approach to legal aid by approaching other sectors, such as health, social services and victim support. This approach aims to have an impact through legal aid not only on the fairness of the trial, but also on other outcomes of the process, such as crime prevention. It may address the root causes of crime — for example when it is related to issues such as drug abuse, holistic legal aid can also direct the beneficiary to assistance for addressing the addiction — as well as preventing recidivism by assisting in resolving social issues, and building a connection with communities to ensure successful rehabilitation and reintegration into society.

75. In some countries, legal aid agencies have adopted such a holistic approach. One country applying the public defender model uses an approach that directs clients to other services, including civil legal aid, that could assist them in exercising their legal rights, such as right to health, housing, or increasing social security. In each part of the country, public defenders were appointed to lead the implementation of this holistic approach, and cooperation was institutionalised with legal aid clinics and associations providing relevant services. In another country that has established a public defender model, a programme was developed to address the social needs of people deprived of liberty and their families by a team of social workers, psychologists and lawyers.

76. Another country developed an innovative strategy on community justice, which incorporated a multi-sectorial approach including crime prevention aspects, and addressed underlying causes of crime, aiming to support social reintegration. Institutions and mechanisms for implementation were created under a national law, including the establishment of partnerships between all relevant stakeholders. Legal aid lawyers could have an important role to play in the implementation of this new strategy, by taking part in a multi-disciplinary approach and reaching out to community partners.

Meeting the needs of specific groups of clients

77. Guideline 11 calls on States to take into account the needs of specific groups when designing the nationwide legal aid schemes. This could, inter alia, include approaching professionals from other disciplines when necessary, engaging

⁴⁷ See also Guideline 11.

translation services, or using visual and audio aids; or be achieved by establishing specialized legal services, dedicated to providing legal aid to specific groups, such as persons with disabilities, child-friendly legal aid or legal aid services for women.⁴⁸

78. Specialized legal aid service delivery requires targeted strategies to assess the needs of the population, as well as skilled providers, who are trained to work on such cases. The speakers in Session 4 of the Seminar described relevant laws, policies and practices on the provision of specialised services to such groups in different delivery models.

Women's access to legal aid

79. Women as such are not a vulnerable group, but may be subject to specific obstacles in accessing justice, and face discrimination when coming into conflict with the criminal justice system. In many countries, women encounter difficulties in understanding and navigating the criminal justice system, due to language barriers, illiteracy or insufficient knowledge of their rights, as well as cultural barriers within communities. Moreover, as suspects, offenders and prisoners, women face unique challenges in the criminal justice system, which is typically geared to deal with male offenders and mostly does not adequately address the different characteristics and needs of women. More often than their male counterparts, female prisoners have complex health needs, post-traumatic stress or drug use disorders.

80. The UN Principles and Guidelines in Guideline 9 provide a list of specific measures States may adopt to ensure women's access to legal aid by "(a) Introducing an active policy of incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice; (b) Taking active steps to ensure that, where possible, female lawyers are available to represent female defendants, accused and victims; (c) Providing legal aid, advice and court support services in all legal proceedings to female victims of violence in order to ensure access to justice and avoid secondary victimization and other such services, which may include the translation of legal documents where requested or required."

81. In addition, Guideline 1 provides that "whenever States apply a means test to determine eligibility for legal aid they should ensure that: (f) if the means test is calculated on the basis on the household income of families, but individual family members are in conflict with each other or do not have equal access to the family income, only the income of the person applying for legal aid is used for the purpose of the means test."

82. In line with Principle 13, legal aid providers working with women should have the appropriate experience and knowledge to provide adequate legal advice and should be well informed of women's special needs as offenders. This may include trying to ensure, where appropriate, that female clients are interviewed by female officers, and are detained separately from males and that detention officers are female. They should also look into their real financial status and ensure that the means test for eligibility to legal aid is applied fairly, in line with Guideline 1, as well as into the needs of pregnant women and women with children, and raise such issues at the sentencing stage.

83. In all cases, legal aid providers and legal aid service providers must have specific training on the relevant gender equality and standards applicable, as well as listening and counselling skills. In that regard, one of the key instruments adopted in 2010 is the *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules), which also contain reference to access to legal advice. The Bangkok Rules provide detailed

⁴⁸ The Global Study on Legal Aid found that specialized legal aid services were provided for a wide range of marginalized groups and groups with specific needs — only one third of respondents noted that no specialized services were offered in their countries. For example, among services most commonly available, almost half of responding Member States provided services to persons with disabilities, and services to women, see p. 73, pages 167–168.

guidance on the needs of women prisoners and offenders, including issues such as whether to have children stay in prison with them, or specific health requirements.⁴⁹ The need for such international rules was recognized after it became apparent that, globally, while the percentage of women in prison was growing at a faster rate than that of the male prison population, the policies, programmes, and structures that governed criminal justice systems and penitentiary policies remained largely male-centred and did not yet take into account the needs of women. Legal aid providers should also be informed of the specific circumstances for women's offending, which are different from men's. Many of the women prisoners have a history of sexual abuse and drug abuse, and come from low socio-economic status. A legal aid provider representing women should be aware of these issues, and consult with other relevant professionals. Women from poor areas might be illiterate and require advice before signing documents or statements. As many women prisoners were subject to sexual abuse or other forms of violence, Rule 7 of the Bangkok Rules establishes that if the existence of sexual abuse or other forms of violence before or during detention is diagnosed, the woman prisoner shall be informed of her right to seek recourse from judicial authorities and to be assisted by legal aid provider.

84. UN Women, in cooperation with UNODC, UNDP and the Office of the United Nations High Commissioner for Human Rights (OHCHR), has developed an essential services package on access to justice for women, describing the unique obstacles women face in obtaining access to justice, including in the criminal justice system.⁵⁰

85. In one country, a legal aid department at the lower administrative level in cooperation with the local women's federation set up several legal aid stations for women, including to provide assistance to women victims of crime and domestic violence. In another country, legal aid services focused on providing assistance to women victims of domestic violence, as part of a national effort to address domestic violence. With international support, training materials for law enforcement, justice officers and legal aid providers who work with victims of domestic violence were developed and training exercises were carried out across the country. Data collection and analysis was carried out regarding services provided to domestic violence victims.

86. In a country using the public defender model, the main office created a commission dealing with gender issues to facilitate women's access to justice, provide better defence to protect their rights, and facilitate the implementation of defence strategies with a gender-sensitive approach, in particular in cases where women were victims of violence and were in conflict with the law. The staff of the commission were lawyers with specific training in international human rights and criminal law, with a focus on gender issues. The commission, among other duties, carried out awareness raising activities regarding the rights of women; promoted cooperation agreements with government entities and non-governmental organizations, and other institutions concerned with women's rights; and implemented mandatory training activities on gender issues for all members of the public defender's office. The country also established a legal aid programme for women deprived of their liberty, that provided counselling and legal aid in non-criminal matters that arose.

Legal aid for persons with disabilities or mental health problems

87. It was generally agreed that persons with disabilities require specific assistance in order to fully understand legal proceedings and participate in an appropriate manner. The type of assistance required would differ depending on the disability, and may require certain adjustments made to or in the court room, for example to allow for entry of service dogs, to ensure the availability of a translator for sign language, or that the court room can be accessed by wheel-chairs. As explicitly stated in the *United*

⁴⁹ General Assembly resolution 65/229, annex. Rules 2 and 7.

⁵⁰ See, for instance, United Nations, United Nations Essential Services Package for Women and Girls Subject to Violence — Core Elements and Quality Guidelines, available online at <http://www.unodc.org/documents/justice-and-prison-reform/EN-Modules-AllInOne.pdf>.

*Nations Convention on the Rights of Persons with Disabilities*⁵¹ in Article 13, “States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural [...] accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.” The Article also refers to ensuring effective access to justice for persons with disabilities through appropriate training of “those working in the field of administration of justice, including police and prison staff.” This should, according to participants of the Seminar, include legal aid providers.

88. In one country represented, legal aid services provided took into account the needs of persons with disabilities through a dedicated programme for the protection of their rights and interests, which included legal aid information in Braille for the blind, sign language translators for the deaf — particularly during the process of lawyers’ interviews — as well as home visits of personnel for those with limited mobility. Lawyers participated in legal consultations and lectures on legal needs of persons with disabilities, and in one city, legal aid institutes designated lawyers to defend persons with disabilities, both offenders and victims.

89. In countries represented that use the public defender model, the national public defender’s office provided legal representation to persons with mental disabilities. In one country, this also included legal assistance in civil cases, under a specific programme that covered healthcare and disabilities aimed to provide a comprehensive range of services to enable persons with disabilities to fully exercise their human rights. This included strengthening the defenders’ skills on issues related to the right to healthcare, and in defending the rights of persons with disabilities. One of the main activities carried out was the elaboration of a protocol on access to justice for persons with disabilities in consultation with other government sectors and stakeholders, which was disseminated among justice administrators together with a training of trainers. In another country, guidelines on representing persons with disabilities were issued to provide them with legal aid regardless of their financial situation, and a dedicated department in was established in the head office for representing persons with mental disabilities. One of its functions was to monitor the quality of representation by building up professional knowledge in this specific area, providing continued training to the external staff and supervising their work. This included consultation with experts, whose services were covered by the budget of the office. In order to increase efficiency of cooperation with experts, the public defender’s office maintained a database that included an updated list of experts sorted by their area of expertise and professional experience. The department also took action against the use of illegal practices by authorities, such as unjustified physical restriction of persons with mental illnesses.

Legal aid for foreign citizens and migrant workers

90. One of the represented countries shared the experience of a legal aid office that dealt with a high percentage of foreign citizens in need of legal aid, the majority of cases relating to drug-related crimes. To overcome language barriers, cultural differences and the lack of knowledge of the legal system frequently experienced by foreign recipients of legal aid, the municipal legal aid office made efforts to build up and improve a system for safeguarding criminal legal aid for foreign citizens during the stages of investigation, prosecution and trial. The system helped to ensure an impartial and fair treatment of foreign citizens when charged with a crime, including hiring of translation services for 30 foreign languages, covered by government budgets. To ensure quality of services, a team of professional lawyers for criminal legal aid was created, and a specialised expert lawyer team was established to handle difficult and complicated criminal cases. All lawyers were provided with trainings prior to being assigned to cases, and each lawyer had to go through at least one session of training before being placed on a legal aid lawyer team. Furthermore,

⁵¹ General Assembly resolution [61/106](#). Article 13 on “access to justice.”

psychological experts were invited to provide trainings on rapport building between lawyers and legal aid recipients as well as how to maintain sound mental health under high work-pressure. In another municipality, ethnic minorities and foreigners who face a criminal sentence of imprisonment of more than one year, and who are not familiar with the local language were fully entitled to legal aid.

Legal aid for persons living in rural, remote and economically and socially disadvantaged areas

91. One of the groups identified in the UN Principles and Guidelines as requiring special attention of legal aid service providers are persons living in rural, remote and economically and socially disadvantaged areas. Guidelines 11 and 12 recommend that States identify and put in place incentives for lawyers to work in such areas, for example tax exemptions or reductions, student loan payment reductions, fellowships and travel and subsistence allowances.

92. One country presented strategies to overcome the challenge of delivering legal aid services in a huge remote province with many ethnic minority groups using different languages. First, a regional seminar was held to develop a coordination mechanism for the use of resources across the region, in order to balance the gaps in development between different areas. As a follow up, a criminal legal aid defence lawyers team was created to provide services to the six ethnic autonomous areas that were uniformly appointed and assigned by the provincial legal aid centre. The second strategy was to increase the subsidy for lawyers as an incentive for handling cases in remote areas. The local authorities issued guidelines that clearly defined the subsidies for criminal legal aid, with increased subsidies for complicated and serious cases and for cases involving certain locations in order to mobilize lawyers. Dedicated funding was allocated for legal aid in the less developed areas. The third strategy was to use technology and social media to promote justice. This included opening a legal aid website and a social media network, a legal aid app and providing online consultation services, including a call-in service hotline. There are plans to expand services in 2018 to include online legal aid application, notarization, forensic authentication and mediation. In addition, the provincial legal aid centre and the authorities in different cities opened an online chat account to build a network and provide online advocacy and consultancy services.

93. To meet the challenges of its unique population, the provincial centre has furthermore taken measures to expand the scope of legal aid by adapting eligibility requirements, to include mediation services in addition to legal aid, and to ensure availability of information in local languages. To address the shortage of lawyers, the centre intended increase the frequency of training for the minority legal service providers, to carry out volunteer service campaigns in areas where minorities are located, to better coordinate handling of serious and difficult cases, and to encourage law firms to open branches in remote areas.

IV. Group discussions

94. At the end of the second day, participants split in three working groups to apply information they had received during the presentations and discussions in relation to a newly introduced duty lawyer scheme, whose implementation had begun across the country. Participants discussed the assignment of duty lawyers to police stations, detention centres and courts, as a way to ensure full coverage of legal aid services at all stages of the criminal justice process. In China, duty lawyers' schemes are available in several provinces, located in work stations in courts, detention centres and prisons, as well as rural areas and for specific vulnerable groups. In this session, participants also had an opportunity to discuss the three core topics of the Seminar — effectiveness, quality assurance and meeting the needs of clients — in the context of such schemes. The format allowed for more detailed sharing of experiences from different provinces within China, and the identification of common practices and challenges.

Effectiveness

95. One group discussed necessary elements for a duty lawyer scheme to be effective and efficient and the types of measures to improve management that could be recommended. The group addressed several elements, such as the need for a legal and policy framework on the role of duty lawyers; the availability of human resources to support such a service; the selection of lawyers with the necessary skills, professional ethics and training; a dedicated monitoring and evaluation mechanism focusing on duty lawyers; an adequate and clear system of subsidies; timeliness of the service; as well as suitable infrastructure regarding offices and supplies and proximity to the relevant institutions.

Quality

96. Another group discussed elements necessary for a duty lawyer scheme to ensure provision of high quality services and the types of skills and training required. The group identified several elements of a successful duty lawyers' scheme, reiterating the observation made by the first group regarding the importance of the physical location. In case there was no close proximity, there should be video- or teleconferencing services to allow for direct contact with the client. The importance of good coordination between legal aid centres, courts, police and detention centres, was discussed, as well as the integration of such services into existing hotlines. It was also deemed important to create incentives for good lawyers to take part in the scheme, and exit strategies in the case of misconduct. To ensure quality, the need for evaluation, peer review of files, and seeking feedback from courts, clients and partners was mentioned. There was consensus on the need for minimum training and skills — at least 3–5 years of previous experience, and a minimum number of cases handled, as well as adequate knowledge of law and ethics, a good disciplinary record, and a general commitment to legal aid values. Specialist accreditation should be considered for those working with vulnerable groups. As the case load was high, duty lawyers should be efficient, flexible and proactive, willing to travel, good at record keeping, good at client communication, have IT skills, as well as some knowledge of criminal psychology.

Meeting the needs of clients

97. The third group discussed the type of guidelines and mechanisms that were necessary for a duty lawyer scheme to ensure a client-centred approach, and to address the needs of specific groups. The group concluded that several elements were required, but the first step was to ensure that clients were informed of their right to legal aid by police and court officers, and that good cooperation among lawyers, remand facilities, police, prosecution, and courts was maintained. The group also found that measures should be put in place such as training and monitoring to assure the quality of the services provided. The funding and business model of the duty service were also crucial to its success, and it was suggested that business guidelines be developed for duty lawyer programmes. It was noted that for the rights of the clients to be guaranteed, the transfer of the case from the duty lawyer to the defence lawyer should be done in an appropriate manner, or there should be a mechanism to allow the duty lawyer to continue handling the case as a defence lawyer.

V. Site visit

98. On 26 January, a site visit took place at the local Guangzhou Municipal Legal Aid Department — the first legal aid centre established in China — and the Legal Aid Station in Haizhu District Court, one of the courts where the new duty lawyer scheme had been implemented. The Director of the Centre explained how comprehensive assistance was provided, and participants learned about the history of the Centre and expansion of services in the recent past, notably to reach marginalized groups such as ethnic minorities, migrant workers and their families, as well as persons with specific

disabilities, such as blind persons. The Centre also made extensive use of new technology and social media to raise awareness and reach more beneficiaries, and installed robots and other interactive machines in the waiting area that deliver information on basic legal problems, eligibility to receive legal aid, and how to apply for services. District court and lower courts' trials that are open to the public were streamed online with a split screen that shows all parties, to allow for more information of the public and other lawyers on the proceedings.

VI. Concluding remarks and observations

99. A plenary session was conducted in the evening of 25 January to conclude the Seminar, and final remarks and observations addressed the importance of exchange of experiences among different countries, as well as among practitioners and experts from academia and research. While legal systems and systems of legal aid delivery were different, the aspirations and challenges were the same: to ensure access to legal aid in all areas of the country, for all populations who are in need, and at all stages of the criminal justice process, especially in the early stages. The continued importance of implementing the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems was reaffirmed. Of particular interest were the use of new technology to ensure timely provision of services and interaction with clients, and also as a platform for training opportunities and information exchange among legal aid providers. Equally important was to base reforms on solid assessments and research of the status quo and the needs of legal aid beneficiaries, and to carefully test delivery models and activities over a certain period of time by way of pilot projects, to learn and adjust as necessary.

100. It was regarded as highly important to look at legal aid delivery from a holistic point of view taking into account the clients and their needs, and not just the case at hand, which is of particular relevance in cases involving vulnerable persons or those with specific needs, where legal aid providers' skills can make a great difference regarding the quality of services they provide. As legal aid system reforms were under way in many countries and new challenges were arising, it was suggested that efforts should go beyond fast development and focus on the quality and effectiveness of services, while ensuring respect for human rights and the rule of law, as well as address social equality. The central theme of the Seminar, the quality of services, was discussed with a focus on standard setting, as well as putting in place efficient quality evaluation measures such as peer review mechanisms. The creation of support networks among legal aid providers as was already done in some countries, online or in person, was regarded to be a very good measure to develop a sense of community and learning from one another, as well as a source of expertise for handling difficult cases. The importance of cooperation with other criminal justice actors such as police officers, prosecutors and judges, was highlighted throughout the discussions.